

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

UNITED RENTALS OF MICHIGAN, INC.¹

Employer

and

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL-CIO

Petitioner

Case 13-RC-20136

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full time and part time truck drivers, mechanics, yard employees and dock/warehouse employees employed at the Employer's shop currently located at 9610 West 194th Street in Mokena, Illinois, but excluding all office clerical employees, sales employees, professional employees, guards, and supervisors as defined by the Act.

All full time and part time truck drivers, mechanics, yard employees and dock/warehouse employees employed at the Employer's shop currently located at 2500 East Higgins Road, Elk Grove Village, Illinois, but excluding all office clerical employees, sales employees, professional employees, guards, and supervisors as defined by the Act.

All full time and part time truck drivers, yard employees, and dock/warehouse employees employed at the Employer's shop currently located at 4646 South Kedzie, Chicago, Illinois, but excluding all office clerical employees, sales employees, employees represented by other labor organizations, professional employees, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's

Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 150, AFL-CIO

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before August 5, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by August 12, 1999.

DATED July 29, 1999 at Chicago, Illinois.

/s/ Harvey Roth

Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.

2/ The arguments advanced by the parties at the hearing and in the briefs have been carefully considered. The Employer urges the Board to disregard the Petitioner's brief because it was not served on the Employer until July 14, 1999, after the due date of June 22, 1999. The Region's records reflect that the Petitioner's brief was received in the Region by the (extended) deadline of June 22, 1999 (as was the Employer's brief). There appears to have been some confusion in the service of the Petitioner's brief on the Employer. The Petitioner contends that it mailed its brief to opposing counsel on June 22nd but cannot produce documentation to verify that fact.

Under Section 102.67 of the Board's Rules and Regulations, "Any party desiring to submit a brief to the Regional Director shall file the original and one copy thereof ... within 7 days after the close of the hearing Copies of the brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Regional Director together with the brief. No reply brief may be filed except upon special leave of the Regional Director." Here, both parties submitted timely briefs to the Region. The Rules and Regulations do not specify that the brief to the other parties need be served on the same date as due to the Region. Nevertheless, assuming *arguendo* that the Employer was not served with the Petitioner's brief until July 14th as it asserts, it appears that the Employer was not prejudiced inasmuch as no reply briefs are permitted and that processing of the case was blocked by the filing of an unfair labor practice charge. Accordingly, I have accepted and considered the Petitioner's brief.

3/ The Employer is a corporation engaged in the business of equipment sales and rental. During the past calendar year, a representative period, the Employer sold and shipped goods and materials valued in excess of \$50,000 from its Chicago, Illinois, facility directly to points outside of Illinois.

4/ The Petitioner seeks to represent a unit of all full time and part time truck drivers, mechanics, yard employees and dock/warehouse employees employed at the Employer's shops located at 9610 West 194th Street in Mokena, Illinois and at 2500 East Higgins Road, Elk Grove Village, Illinois and all truck drivers, yard employees, and dock/warehouse employees employed at the Employer's shop located at 4646 South Kedzie, Chicago, Illinois. At the hearing, the parties stipulated that the classifications of truck drivers, mechanics, yard employees, and dock/warehouse employees share a sufficient community of interest and comprise an appropriate unit for purposes of collective bargaining. The Employer, however, contends that only single-facility units are appropriate whereas the Petitioner argues that a unit consisting of the employees in the above-named classifications at all three of the named facilities is appropriate. The mechanics at the Kedzie facility in Chicago ("Kedzie") are represented by a separate labor organization, Automobile Mechanics Local 701, and accordingly are excluded from any appropriate unit here. Thus, the issue presented by the case is whether a single facility or multifacility unit is appropriate.

FACTS

United Rentals (“United” or “the Employer”) is in the business of selling and renting various types of construction and homeowner-oriented equipment. It has some 540 facilities nationwide. The facilities at issue in this case (Elk Grove Village, Mokena, and Kedzie) were formerly owned by and known as Arrow Equipment. United acquired these facilities about August 1998.

The three facilities in this case are located in the Chicago metropolitan area. Elk Grove Village is about an hour’s drive from the Kedzie facility and about an hour and a half to two hour drive from Mokena. The drive between Kedzie and Mokena would take about an hour and a half to two hours. The three facilities have individual on-site managers: Grant Mitchell (Elk Grove Village), Vince Zawaski (Kedzie) and Bill Insley (Mokena). Each of these managers reports to Dan Imig, Regional Vice-President of Operations for the Midwest Region. Imig, who is based in St. Louis, Missouri, oversees 37 facilities in 13 states. United has other facilities in Illinois not at issue in this case¹. One of these, Bloomingdale, was discussed briefly at the hearing. United acquired that facility about four months prior to the hearing. The only Illinois facilities in Imig’s region are Elk Grove Village, Mokena, Kedzie and Bloomingdale. Imig stated that the other Illinois facilities are not in his region because of differences in the type of business they do. The managers speak with Imig by telephone about once or twice a month. They must speak with him before purchasing any equipment which costs more than \$10,000. The managers formulate the budget for their stores and submit it to Imig for approval. Imig may make suggestions for revision such as how to increase revenue or cut costs, including labor costs.

The Employer’s payroll for the midwest region is processed in Pittsburgh, Pennsylvania, which is one of United’s four payroll centers. The individual facilities’ managers review the employees’ time cards before forwarding them to the appropriate department for processing. The payroll department keeps copies of records of changes in personnel and pay. The Employer’s risk management department is based in Modesto, California, and determines the safety programs for the individual facilities which must follow them. It also retains copies of injury reports.

United maintains the same policies on equal employment opportunity and harassment for all facilities. The corporate office located in Connecticut formulated the profit sharing or bonus program for which employees are eligible. The bonus pool is based on the individual facility’s bottom line profit. The facility manager determines how to divide that pool among the employees. The parties stipulated that, other than this bonus program, the employees receive the same benefits such as vacations, sick leave, health insurance, and 401k program. The individual managers determine the wages for their employees. In Elk Grove Village, the mechanic earns \$13/hour. The two drivers there earn \$14 and \$15 per hour, respectively. At Kedzie, the dock/warehouse employee receives \$10/hour, the yardman earns \$12.50/hour and the two drivers earn \$10.50 and \$16.50 respectively. At Mokena, the warehouse employee earns \$10/hour, the mechanic earns \$14/hour and the driver earns \$14.50/hour. The Elk Grove Village driver works from about 7 a.m. to 3:30 p.m. The Kedzie drivers and warehouse employee also generally work 7 a.m. to 3:30 p.m. although the warehouse employee may work 8 a.m. to 5 p.m. The Mokena driver works from about 7 a.m. to 3:30 p.m. The warehouse employee there begins his day around 8 a.m.

¹ The Petitioner filed a petition in case 13-RC-20180 on July 21, 1999, seeking to represent employees at another United Rentals facility in Hazel Crest, Illinois.

The record indicates that, regardless of location, the duties of the respective classifications are similar. The mechanics repair rental equipment or equipment which a customer has brought in. The drivers pick up and deliver various pieces of equipment. They are routed by the manager (and for Elk Grove Village, the assistant manager). The drivers' territories are not limited by site. All three facilities serve the Chicagoland area. The drivers can communicate with the shops as well as with one another via radios in the vehicles. The yard employees check in rental equipment upon return, unload or unhook it, check it for damage and refuel it. The mechanic can also perform these tasks if a yard employee is unavailable. The job descriptions for the employees are determined by the individual manager.

The employees at the individual facilities report to the manager of that facility. The manager determines the staffing level for his facility, determines the placement of advertising for vacant positions, interviews applicants and determines which applicant, if any, to hire. The managers independently determine the issuance of discipline and terminations of employees at their respective facilities. For example, the manager in Mokena discharged some employees who were later hired in Elk Grove Village. The managers may consult with Imig, typically if there is concern about legal action. About two months prior to the hearing, for example, Zawaski spoke with Imig prior to discharging an employee.

The managers determine the schedules for their employees and assign tasks to them. The managers may, depending on the facility, delegate some of these responsibilities to other employees. For example, at Kedzie, three employees serve as "department heads" in parts, finance and service. The record reveals only one potential instance of a manager at one facility directing the work of an employee from another facility. On that occasion, Zawaski told an Elk Grove Village driver who was at the Kedzie store to take back an extra part. There was some evidence that the Elk Grove Village manager had called Kedzie to leave that message for his driver. The individual managers also complete annual evaluations which determine wage increases for employees. The forms used for performance evaluations are the same for the different facilities as are the forms to document pay increases or other personnel action records (PARs). The individual facilities keep personnel, account, and safety records on-site. Account and billing information, at the time of the hearing, was sent to Kedzie. The payroll department has copies of PARs and risk management retains copies of injury reports.

The managers determine which products to stock at their stores. The record shows some overlap in the stocks of the three facilities but some of the stores have products not carried by the others. While the stores primarily sell from their own stock, when one store has a request for a certain item which it does not stock, it will contact one of the other two stores and have that item transferred to its store. The three stores use the same catalog for the sale of items and the same "line card" which lists rental rates for various items. The line card and catalog list the addresses and phone numbers of all three stores. The catalog has a picture including personnel from the three stores on the front cover. A customer could contact any of these stores for information on purchase or rental of equipment. The managers can independently offer lower rates and offer sales or promotions. The stores occasionally band together to order equipment from a supplier in order to obtain a volume discount. The sales invoices indicate that payment is to be submitted to the Kedzie store. That procedure, however, changed two days before the hearing. Now, all payments are submitted to St. Louis.

A customer may rent equipment at one facility and return it at another. In those instances, the driver from one stores will pick up or deliver the equipment to the other store or the drivers may meet halfway. The record shows that this happens once or twice a month. If one of the facilities does not have a rental item in stock, it can obtain the item from another store. Generally, if this happens, the store which rents the equipment receives 30% of the revenue and the store which owns the equipment receives 70%. The record revealed that

this type of transaction occurred about once last year out of a rate of about 200 rentals per month. The stores could make the same arrangement with any other United facility.

The record reveals sporadic instances of interchange and some contact among the employees. The record reveals only one group meeting with employees from all facilities. That meeting, conducted by Imig, occurred when United first acquired Arrow Equipment. Imig reviewed corporate policies and information about United. The drivers may see employees from the other facilities if they are making pick-ups or deliveries to those stores. The Mokena driver estimated that he goes to Elk Grove Village about two to three times per month and goes to Kedzie once or twice a week. The Elk Grove Village driver stated that, in the six weeks he had worked there, he went to Kedzie five or six times. The drivers may meet about five to six times per year to exchange equipment. The mechanic in Mokena stated that he sees the Kedzie drivers from about once a month to once a week. While the drivers are not generally transferred temporarily among the facility, the record includes one instance in which an employee from Kedzie did some assignments for an Elk Grove Village driver who was on leave for a week. That Kedzie employee formerly worked at Elk Grove Village and is the only permanent transfer since United acquired Arrow. On another occasion, a Mokena driver covered for Kedzie's driver in early 1999 while the Kedzie driver was on vacation. The Mokena driver made pick-ups using the Kedzie truck in Peoria and Bolingbrook on two days. The mechanics at Mokena or Elk Grove Village can call an employee, Ken Baron, at Kedzie who has more experience for technical advice on repairs. The Mokena mechanic stated that this happens about once a week. The mechanics may contact another store if the part they need is not in their stock. While parts usually are obtained from outside vendors, the stores call one another about once a week in search of parts.

ANALYSIS

The issue presented in the instant case is whether the petitioned-for multifacility unit is appropriate or whether single-facility units are appropriate. The Employer cited numerous cases stating that a presumption in favor of a single-facility unit applies. The Board, however, has held that the presumptive appropriateness of a single-facility unit is inapplicable where the petitioner seeks to represent a multifacility unit. *Hazard Express, Inc.*, 324 NLRB 989 (1997); *Capital Coors Co.*, 309 NLRB 322 fn. 1 (1992). The Board determines whether a single facility or multifacility unit is appropriate based on the evaluation of the community of interest among the employees including: (1) similarity in employee skills, duties, and working conditions, (2) functional integration of the business, including employee interchange, (3) centralized control of management and supervision, and (4) geographical separation of facility and extent of union organization and (5) employee choice. *Capital Coors, supra*, at 325

Although in *Hazard Express* and *Capital Coors*, the Board found that multifacility units were appropriate, I find the opposite result given the facts of the instant case. Applying these factors to this case, I find that the employees at the three facilities do not possess a sufficient community of interest to constitute a multifacility unit. Accordingly, I find that single facility units are appropriate for the purposes for collective bargaining.

First, the managers run their own facilities. While basic personnel policies such as EEO and safety programs are set by the central corporate offices, managers have wide discretion as to the operation of their facilities. They independently determine staffing levels; who to hire, discipline, and discharge; employees' schedules; wage and bonus levels; and assignment of work. While the employees' duties and skills are largely

similar, their working conditions, assignments and compensation level are determined by the manager at their facility. All three managers report to Imig but the record demonstrates that he takes a more hands-off approach to overseeing his region's facilities, particularly given that he is responsible 37 stores in 13 states. Indeed, he only speaks with the managers once or twice a month. In sum, the supervision of employees takes place at the individual store level rather than at the regional level.

Next, while the three facilities have contact with one another, they are not functionally integrated. Each one has its own budget, its own stock, and own accounts. The three stores may order jointly from a supplier to obtain a discount, but their stocks are not pooled. Instead, each item is maintained in the individual facility's stock. The stores' stock does overlap but there are some items which are exclusive to an individual store. The sales/promotions are individually determined. Although the stores may occasionally obtain sales or rental equipment from another facility, they generally use their own stock.

Moreover, while the employees have some contact with one another, there is no evidence that it is significant or more than just seeing one another in passing. There has been only one permanent transfer and two occasions of employees from different facilities substituting for one another. Mainly, the drivers see other employees when they are dropping off or picking up equipment from another store. The mechanics do not seem to have much contact with one another except for contacting a mechanic at Kedzie for technical advice. There is no evidence that employees from different stores work together in performing assignments. At most, they may happen to come upon each other in the course of an individual day's work.

Next, the facilities are separated by drives of about an hour or two hours. While this is not unusual in the Chicagoland area, the distances likely contribute to the lack of meaningful interchange. Finally, other than the fact that the mechanics at the Kedzie facility are currently represented by another union, the record does not reveal any bargaining history at these facilities. It is noteworthy that there are other facilities in the Chicagoland area which have not been petitioned-for. There is no evidence as to distinctions among these facilities so it is not known whether those facilities would be appropriately included in the unit, especially the Bloomingdale facility which is in the same district as the three facilities sought by the Petitioner herein. Nonetheless, given that I have found that single facility units are appropriate, an examination of those other facilities is unnecessary.

In sum, the facilities are operated in large part separately from one another and the supervision is independent. Accordingly, the employees' working conditions, other than the fringe benefits, are determined by the individual managers. Further, there is little meaningful interchange and contact among the employees. Based on these factors, I find that the appropriate units for collective bargaining are single facility units at the Employer's Kedzie, Mokena and Elk Grove Village locations.

440-3325; 440-3375-5000
